

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<u>RYAN KERWIN,</u>)		
)		
v.)		C.A. No. 05-93Erie
)		District Judge McLaughlin
WILLIAM MCCONELL,)		Magistrate Judge Baxter
Defendant.)		

ORDER

AND NOW, this 5th day of January, 2007;

IT IS HEREBY ORDERED that Plaintiff's motion for clarification [Document # 75] is DENIED. The previously dismissed motion for summary judgment filed by Defendants has been reinstated and it will be addressed by the Court in due course. The issue of exhaustion is not raised within the reinstated motion for summary judgment and so will not be the topic of any decision on that motion. As this Court has previously indicated, a review of the transcript of the March telephonic hearing reveals that defense counsel did not specifically waive an exhaustion/procedural default argument, but chose not to include such an argument in the pending motion.

IT IS FURTHER ORDERED that Plaintiff's motion for extension of time in which to file "objections" to the December 20, 2006 order of this Court [Document # 76] is DENIED as the requisite time period has elapsed and Plaintiff was granted the relief he sought.

S/ Susan Paradise Baxter
SUSAN PARADISE BAXTER
CHIEF UNITED STATES MAGISTRATE JUDGE